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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/516,753	03/01/2000	Gregory Pinchasik	2390/49701	3706

7590

02/06/2004

KEITH J. MCWHA  
MORGAN AND FINNEGAN  
345 PARK AVE.,  
NEW YORK, NY 10154

EXAMINER
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BUI, VY Q

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 02/06/2004

26

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/516,753

Applicant(s)

PINCHASIK ET AL.

Examiner

Vy Q. Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 12-19 and 51-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11, 20-25, 27-33, 35-44, 46, 48-50, 67-75, 77-79, 81-92, 95-102, 104-105, 108-114, 116-119, 122, 125 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 25/11-25-2003
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims pending in the application are 1-6,9-25,27-33,35-44,46,48-75,77-79,81-92,95-102,104,105,108-114,116-119,122 and 125.

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

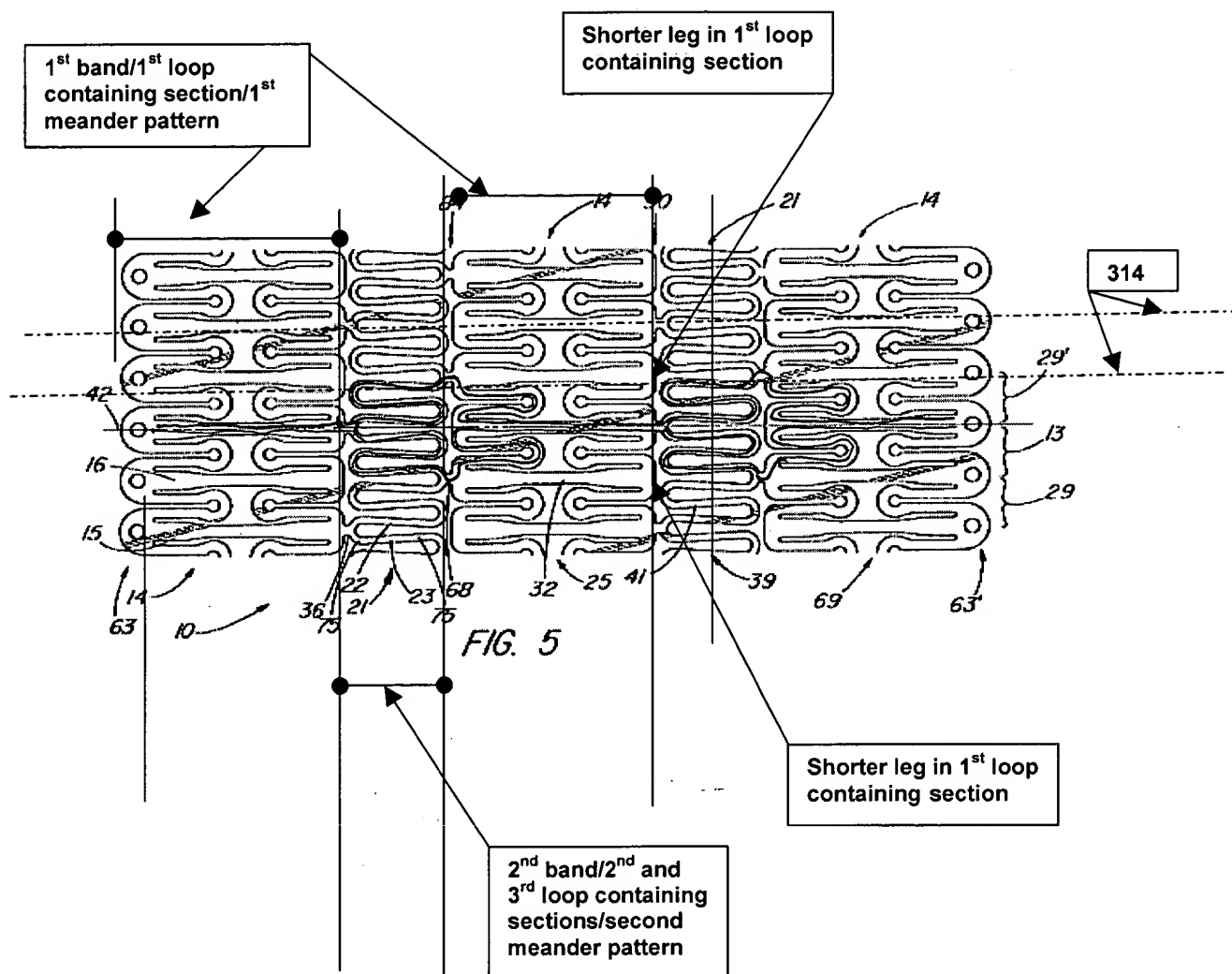
Claims 1-6, 9-10, 20-25, 27-33, 35-44, 46, 48-50, 67-70, 72-75, 77-79, 81, 83-84, 86-88, 90-91, 95-102, 104-105, 108-114, 116-119 are rejected under 35 U.S.C. 102(e) as being anticipated by BERRY et al (6,231,598).

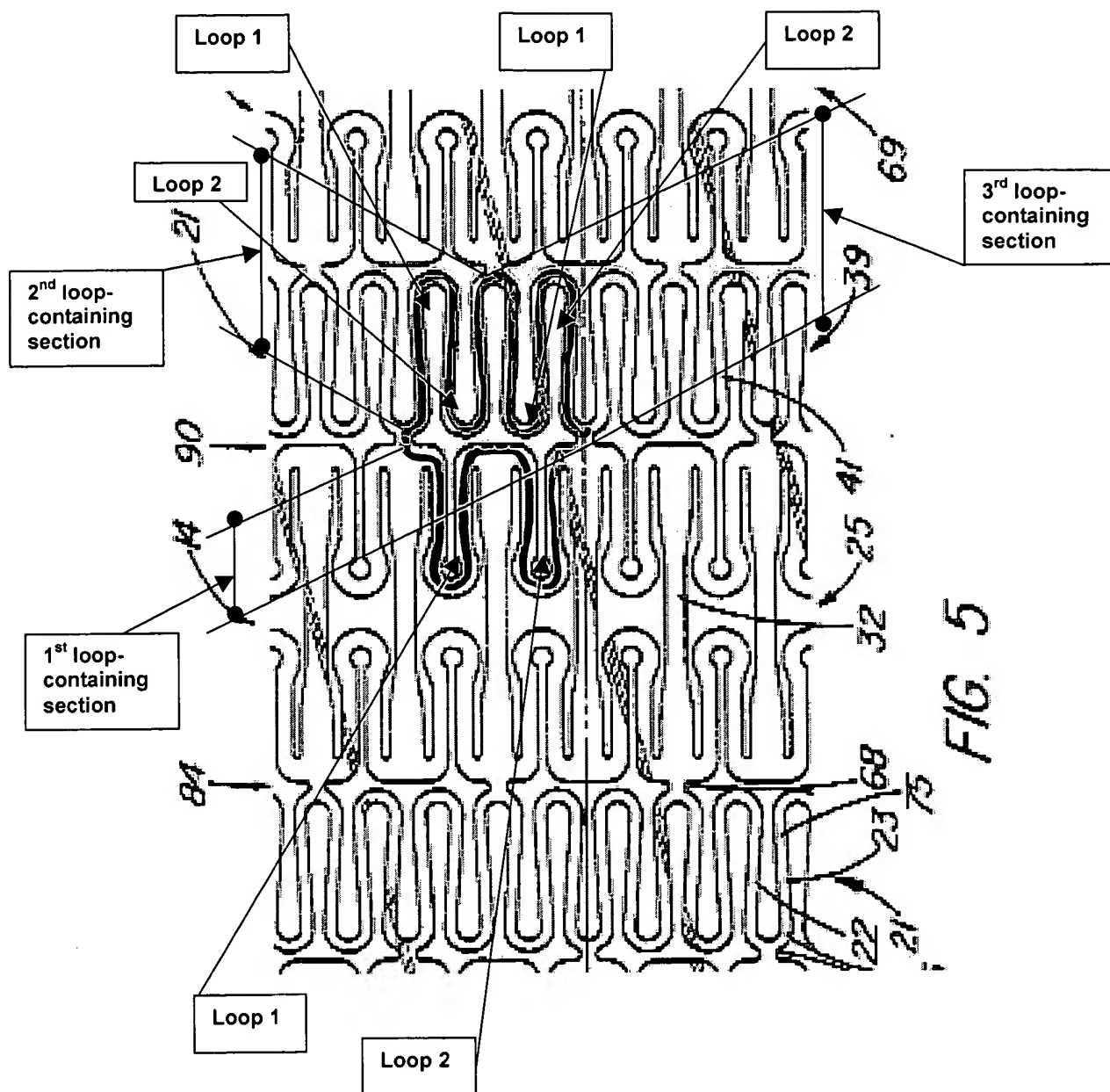
BERRY (Figs. 5 as shown below, for example) discloses a stent of stainless steel or nitinol:

As to claims 1-6 and 9-10, BERRY (Fig. 5, page 4 this paper) discloses: 1<sup>st</sup> loop-containing section (highlighted in brown), 2<sup>nd</sup> loop-containing section (green) and 3<sup>rd</sup> loop-containing section (purple). The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> loop-containing sections form triangular cells (highlighted in yellow), wherein each cell covers the same area. Notice that 1<sup>st</sup> loop-containing section has wider struts than the 2<sup>nd</sup> and 3<sup>rd</sup> loop-containing section, each loop-containing section has two loops, 1<sup>st</sup> and 2<sup>nd</sup> junction points are circumferential aligned and one leg in the 1<sup>st</sup> containing section is shorter than others in the same 1<sup>st</sup> containing section. Notice that the shorter one leg in the 1<sup>st</sup> containing section changes its orientation when in an expansion condition (see Fig. 61 or 63).

As to claim 20, BERRY (column 15, lines 59-63) discloses the stent is coated for reduction of friction.

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As to claims 21-25, 27-33, 37-44, 46, 48-50, BERRY (Fig. 5, page 3, this paper) discloses vertical meander/first meander pattern (highlighted in red) with centerlines 301 and horizontal meander/second meander pattern (in green) with centerlines 314. The centerlines 301 of the vertical meander/first meander pattern are orthogonal to the centerlines 314 of the second/horizontal meander patterns. The vertical/first meander

patterns include even vertical/first meander patterns 310e and odd vertical/first meander patterns 310o. The second/horizontal meander patterns include even horizontal/second meander patterns 312e and odd horizontal/second meander patterns 312o. The first meander patterns intertwine the second pattern to form triangular cells. Each triangular cell has at least one loop containing section, the loop containing section has legs and at least one leg is shorter than the other one in the loop containing section as shown in Fig. 5, page 3, this "Office Action". Notice that the first/vertical meander patterns have two loops per period and the second/horizontal meander patterns have 4 loops per period as shown and the at least shorter one leg in the containing section changes its orientation when in an expansion condition (see Fig. 61 or 63).

As to claims 67-70, 72-75, 77-79, 81, 83-84, 86-88, and 90-91, BERRY (Fig. 5, this paper) discloses stent of stainless steel or nitinol having 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> members which are interconnected as recited in the claims. The curved junction portions of the members define loops (shown in Fig. 5, page 6) as recited in the claims.

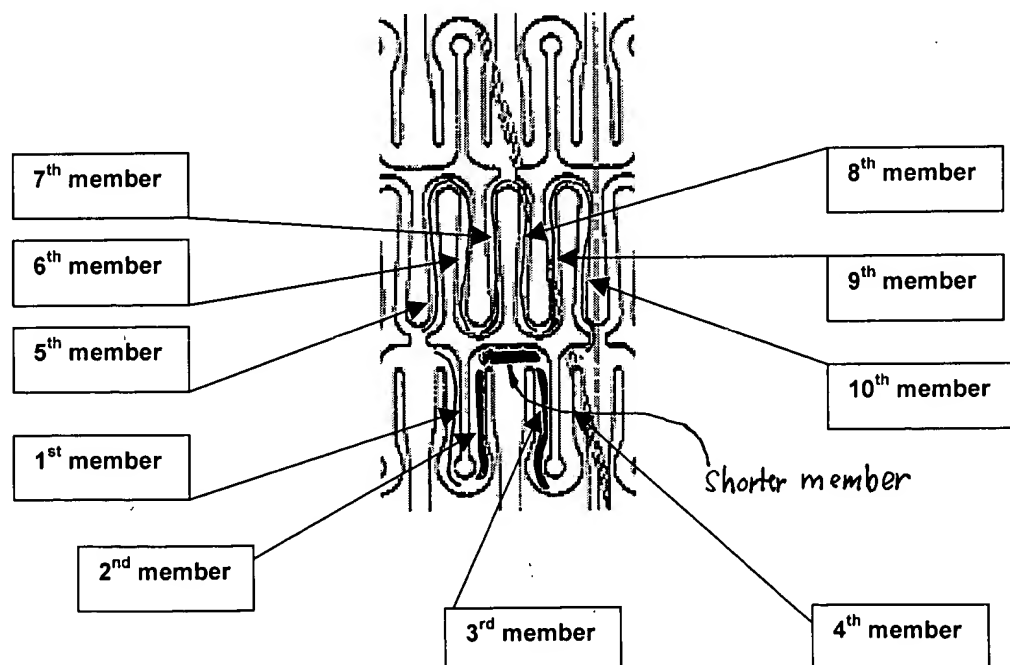
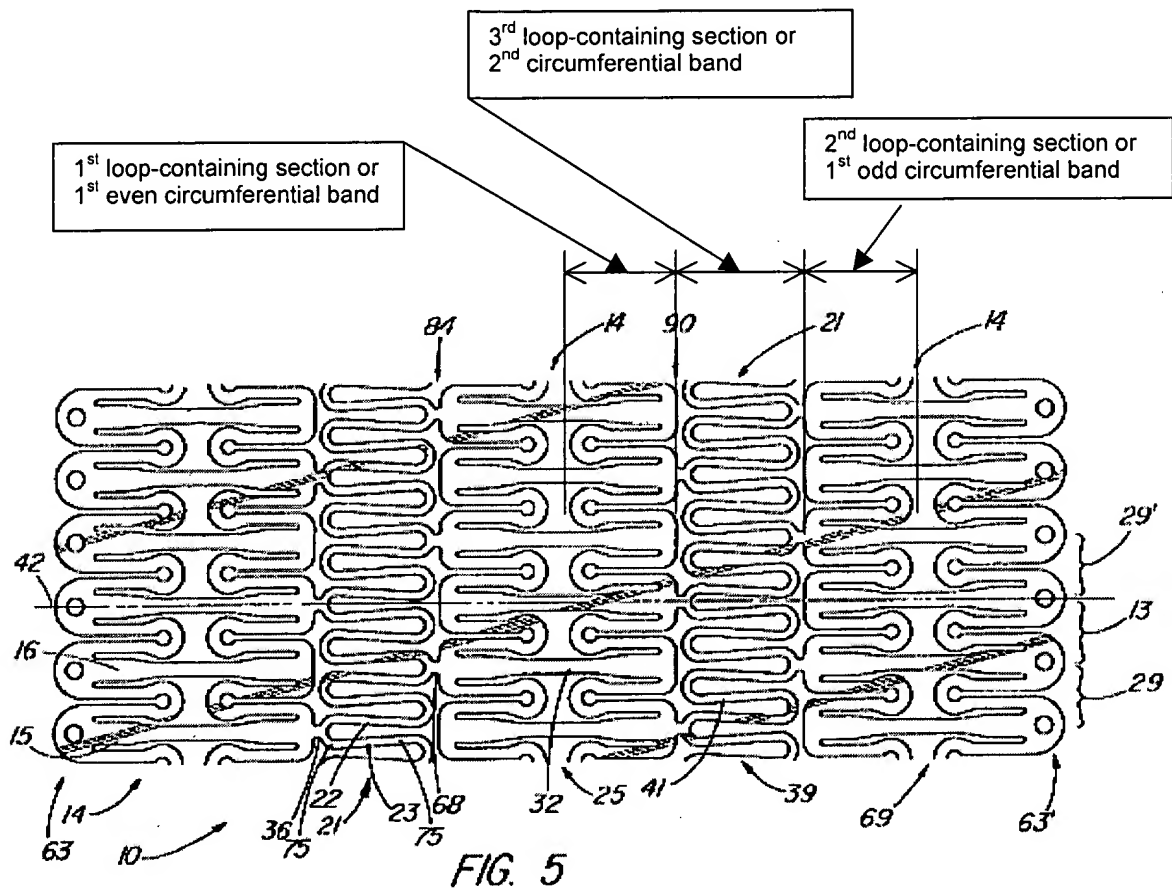


FIG. 5 (for reference of claims 67-92)

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As to claims 95-102, 104, 108-114, and 116-117, BEERY (Fig. 5, also Fig. 5 on page 7, this paper) discloses an even first loop containing section 301e/first circumferential band, an odd first loop containing section 301o/first circumferential band and third loop containing section/second circumferential band disposed between the first and second loop containing sections. The first or second loop containing sections (or the first circumferential band) and the third loop containing section (or the second circumferential band) defines loops as recited in the claims.



**(For reference to claims 95-119)**

As to claim 105, BERRY (Fig. 28) discloses stent 10 having cells with circumferential lengths being longer than longitudinal lengths in expanded position.



As to claims 118-119, BERRY discloses the stent of stainless steel (balloon expanded) or Nitinol (self-expanded).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 71, 82, 85, 89, 92, 122 and 125 are rejected under 35 U.S.C. 103(a) as being unpatentable over BERRY et al (6,231,598).

As to claim 11, BERRY does not disclose stent 10 having cells with circumferential lengths being longer than longitudinal lengths in expanded position. However, modifying the dimension of the cells to fit the features as recited in the claim is quite within level of one of ordinary skill in the art so as to provide more expansion in a circumferential direction for the stent.

As to claims 71, BERRY does not disclose at least one of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> members has a length that is about twice the length of at least one of the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> members in the same space. However, it would have been an obvious matter of design choice to modify the dimension of the members accordingly to achieve the characteristics as recited in the claims, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

As to claims 82, 85, BERRY does not disclose that at least one or all of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> members are more flexible than at least one or all of the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> members. However, it would have been an obvious matter of design choice to

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modify the dimension of the members accordingly to achieve the characteristics as recited in the claims, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

As to claims 89, 92, BERRY does not disclose that at least one or more of the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> is/are more resistant to radial compression than at least one of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> members. However, it would have been an obvious matter of design choice to modify the dimension of the members accordingly to achieve the stent feature as recited in the claims, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). More over, change in size/dimension of the struts/beams of a stent to make them more flexible/rigid (more resistant to radial compression) is well known in the art.

As to claims 122, 125, BERRY does not disclose every limitation as recited in the claims. However, the limitations as recited in the claims are well known in the art and it would have been obvious to one of ordinary skill in the art to modify BERRY device as recited in the claims so as to make BERRY device usable for more applications.

### ***Response to Amendment***

The preliminary amendment E filed on 11/13/2003 (paper #24) has been carefully considered but is moot in view of above rejection because BERRY discloses a stent having triangular cells each cell has legs with at least one leg shorter than the other legs in a same loop containing section and the at least shorter leg change orientation when the stent is expanded (BERRY: Fig. 61, 63). As confirmed over the telephone on 2/2/2004 with the Applicants' representative, Mr. McWha, claims 8, 26, 34 and 47 were rejected in the previous "Office Action" (paper # 22) over BERRY.

**Conclusion**

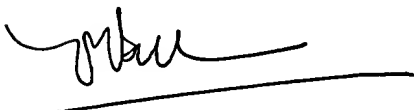
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

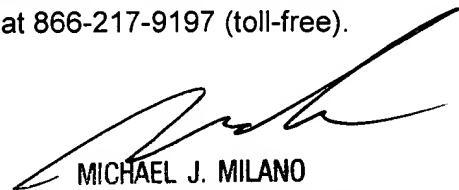
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



VQB  
2/3/2004.



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